

VOLUNTARY REGIONAL AGREEMENTS 2011 Report to the Legislature

OFFICE OF COLUMBIA RIVER



Submitted to the
Washington State Legislature
June 2011



Publication No. 11-12-002

This report is available on the Department of Ecology website at:

<http://www.ecy.wa.gov/biblio/11-12-002>

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*"Voluntary Regional Agreements
2011 Report To The Legislature"*
was prepared by The Office of Columbia River

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Executive Summary

This legislative report on Voluntary Regional Agreements (VRA) is intended to update the Legislature on the status of the VRA program and recommend whether the existing VRA statute, Chapter 90.90.030 RCW¹, should be allowed to sunset on June 30, 2012. Ecology's Office of Columbia River (OCR), in conjunction with comments from the public and stakeholder groups such as the Columbia River Policy Advisory Group (PAG) evaluated three options for the Legislature to consider:

- ❶ Allow the VRA statute to sunset on June 30, 2012 as originally intended in the 2006 Columbia River Basin Water Supply Act (*Chapter 90.90 RCW*).
- ❷ Recommend legislative approval for a finite extension of the sunset clause to allow additional time to evaluate the utility of the VRA as a tool for water supply development.
- ❸ Recommend legislative approval to remove the sunset provision and allow the VRA to remain as a permanent tool for water supply development.

Introduction

The Office of Columbia River is pleased to provide this report on the Voluntary Regional Agreements Program to the 2011 Legislature. An interim report, submitted in December 2008, included overviews on the legislative directive, VRAs and, OCR's policy options. The report also provided information about a potential VRA with Eastern Washington cities and a contracted VRA with The Columbia-Snake River Irrigators Association (CSRIA). This 2011 final report reviews what a VRA is, explains the existing VRA, evaluates the program and gives a recommendation. It also provides a summary of the activities that have occurred since the 2008 interim report.

¹ Chapter 90.90 RCW: <http://apps.leg.wa.gov/RCW/default.aspx?cite=90.90&full=true>

Voluntary Regional Agreements

After decades of struggle over the granting of new water rights, the legislature authorized VRAs as part of the comprehensive Columbia River legislation in 2006 (Chapter 90.90 RCW). A VRA is a legal agreement between water users and the Washington State Department of Ecology (Ecology) “for the purpose of providing new water for out-of-stream use, streamlining the application process, and protecting instream flow” (Chapter 90.90.030 RCW). New water rights can be granted under a VRA through a stream-lined consultation process with fisheries interests in the Columbia and Lower Snake Rivers, provided that instream flows in critical months are not impacted. Since the effectiveness of this new tool was uncertain, the legislature required a trial period, with a sunset provision, to assess its usefulness. The VRA section of the statute expires on June 30, 2012.

Under the statute, Ecology may decide whether or not to enter into a VRA. Ecology considers important factors such as whether the VRA complies with the legislative requirements, provides significant public value and warrants the use of Ecology’s limited resources needed to develop and manage a VRA. VRAs should directly meet one of the four goals of the Office of Columbia River:

- ❶ Develop surface water supplies to replace declining groundwater in the Odessa subarea aquifer.
- ❷ Develop water supplies for pending applicants and future out-of-stream uses.
- ❸ Develop uninterruptible supplies for existing holders of interruptible water rights on the Columbia River.
- ❹ Improve instream flows.

A group of water users may propose a VRA, and negotiate its terms with Ecology. Following consultation, Ecology may accept and adopt the VRA, which then serves as the framework for issuing new water rights to that group of water users. In general, one can view the VRA as a “ledger” of needs or wants by each side. For a permittee, this may include new water rights, drought permits, and funding of projects. For Ecology, this may include conservation or best management practices, paper water rights amended to show actual water use, and fees to recover water supply development costs.

Once a VRA is accepted by Ecology, VRA participants may file a drought permit or new water right application. The applications are still subject to the normal statutory processes, which includes State Environmental Protection Act (SEPA) and the four statutory tests for issuing a new water right. After a review of any SEPA comments received, Ecology issues a draft Report of Examination (ROE). The draft ROE is posted for comment on the web. Based on the comments received, modifications may be made to the final ROE. This is followed by a 30-day appeal period during which parties objecting to the issuance of a permit may appeal Ecology’s decision. It is Ecology’s practice to refrain from issuing a permit until all appeals are resolved.

The pool of eligible VRA applicants is geographically limited by statute in Chapter 90.90.030(12) RCW to the Columbia and Lower Snake River mainstems, where:

(a) *“Columbia river mainstem” means all water in the Columbia river within the ordinary high water mark of the main channel of the Columbia river between the border of the United States and Canada and the Bonneville dam, and all groundwater within one mile of the high water mark.*

(b) *“Lower Snake river mainstem” means all water in the lower Snake river within the ordinary high water mark of the main channel of the lower Snake river from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark.*

Two Key Elements Make a VRA Unique:

① A fixed mitigation standard for impacts to instream flows: A fixed mitigation standard must be abided by when a new water right is issued through a VRA. A VRA must ensure that new mainstem Columbia or Snake River water rights have no negative impact on Columbia River mainstem flows during the months of July and August, or on lower Snake River mainstem flows during April through August. Since it was not defined in statute, Ecology assessed policy options for interpreting “no negative impact” in the Columbia River Program Programmatic Environmental Impact Statement. In general, this means that during the months of concern, the amount of water taken for out-of-stream diversions must be replaced instream. Some ways the fixed mitigation standard may be achieved are through:

- Modification of existing reservoirs.
- Water right acquisitions.
- Construction of new reservoirs.
- Conservation projects.

② A fixed time frame for consulting with external stakeholders: The consulting process is similar to the process Ecology adopted in Chapter 173-563-020 WAC except that the VRA has a fixed 60-day consulting time frame. Chapter 90.90.030(4)(a) RCW states that Ecology must *“Provide a sixty-day period for consultation with county legislative authorities and watershed planning groups with jurisdiction over the area where the rights included in the agreement are located, the department of fish and wildlife, and affected tribal governments, and federal agencies.”*

Ecology's Voluntary Regional Agreements

The Office of Columbia River provided technical assistance on a potential VRA and is actively managing one contracted VRA.

CSRIA VRA (Active)

In July 2008, Ecology and CSRIA entered into a VRA². The purposes of the VRA are to:

- Provide water for issuing drought permits to existing holders of interruptible water rights.
- Provide water for issuing new water rights on the Columbia and Snake Rivers.
- Require mandatory conservation via best management practices (BMPs) for participants in the VRA.
- Improve the accounting of actual use versus authorized use on water rights for VRA participants.

A Final Programmatic Environmental Impact Statement (PEIS³) released by Ecology on February 15, 2007, helped shape the CSRIA VRA. A key component of the PEIS was to assess the draft VRA that CSRIA submitted to Ecology in 2006. The PEIS looked at the potential environmental impacts from the proposed VRA, including the adequacy of CSRIA's proposed mitigation. Ecology also completed a SEPA Addendum on January 17, 2008 to address changes to the VRA made after the consultation process.

The CSRIA VRA requires that use of these new water rights cannot reduce or negatively impact stream flows in the months of July and August for the Columbia River mainstem and April through August for the Snake River mainstem. To meet this standard, Ecology and CSRIA must pursue methods such as conservation, storage, and acquisition that provide instream mitigation water to offset the summer months' withdrawals.

The CSRIA VRA addresses two groups of water users; existing water right holders with interruptible water rights and new applicants. There are about 340 interruptible water right holders on the Columbia River and 33 interruptible water right holders on the Snake River⁴. Not all are CSRIA members which is a requirement of this VRA. The first VRA enrollment period opened in the spring of 2008. Following several CSRIA workshops held throughout Eastern Washington, enrollment closed with the signing of the VRA on July 18, 2008. Eight CSRIA members applied to participate in the VRA. One member's application was rejected because they were located outside the statutory defined geographic area. The second enrollment period ran through December 31, 2008 and resulted in one enrollment for a total of eight participants, holding 20 interruptible water rights. The current list of participants is in the VRA.

2 CSRIA/Ecology VRA: http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/csria_vra/csria_vra.pdf

3 PEIS VRA Policy Alternatives: http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/finaleis/VI_chp68.pdf

4 <http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/IR1207.pdf>

The finalized VRA required CSRIA applicants to:

- File applications for drought and new permits with Ecology.
- Maintain compliance with BMPs.
- Submit their water rights for recalibration to Ecology.

The finalized VRA required Ecology to:

- Process and issue applications accordingly and in a timely manner.
- Make a good faith effort to provide mitigation water for new permits.

The CRSIA VRA is to be implemented in two phases. The first phase is directed at applying for and issuing drought permits; the second phase is directed at new water rights. Phase One is intended to issue drought permits to CRSIA's participating VRA interruptible water right holders if the following criteria are met:

- Mitigation water is available to offset water use on the Columbia River in July and August and on the lower Snake River in April through August during droughts.
- VRA participants have recalibrated their water rights.

To meet these criteria, participating members commit to improve their efficiency through use of BMPs⁵. Table 1 summarizes BMPs performance standards for irrigation. The percentage differences between "Average" and "BMP" efficiencies could result in net water savings.

The exact amount of savings from BMPs would be resolved through "recalibration". Recalibration is a process to determine the extent and validity of a water right. Recalibrations will be done by Ecology with consultation from CRSIA and guidance from Benton and Franklin Water Conservancy Boards. Net water savings that could be placed in the Trust Water Right Program will be used in part to mitigate for the instream and out-of-stream impacts.

Table 1: CSRIA's Best Management Practices (BMPs)

Irrigation Technology	Average Application Efficiency	BMPs Consumptive Use Efficiency
Solid Set (<i>Above Canopy</i>)	70%	85%
Solid Set (<i>Below Canopy or Row Crop</i>)	75%	90%
Wheel or Hand Line (<i>Impact Sprinkler</i>)	75%	85%
Traveling Gun – Single Nozzle	65%	90%
Center Pivot (<i>Overhead Impacts, >25psi</i>)	80%	85%
Center Pivot (<i>Drop Tube, <25 psi</i>)	85%	90%
Micro-Sprinkler	85%	90%
Drip-Precision Irrigation	88%	95%

5 CSRIA Best Management Practices: http://www.ecy.wa.gov/programs/wr/cwpl/images/pdf/csria_vra/csria_bmps.pdf

In March 2009, OCR and CSRIA agreed to a collaborative approach to investigate the effort required to recalibrate water rights and enroll VRA participants in BMPs. OCR issued a \$30,000 grant to Benton Conservation District (BCD) to lead this effort. Grant monies were dispersed to other conservation districts with local expertise in the geographic vicinity of VRA participants. Because of the uncertainty in the level of effort required, two representative VRA participants were selected; one for the southern counties and one for the northern counties. BCD was to prepare site reports for both recalibrations. The next steps will be determined once reports are received.

Phase Two of the CSRIA VRA is intended to issue new water rights to CSRIA participants if the following two criteria are met:

- The types of conservation projects identified by CSRIA appear capable of providing water in sufficient quantities to support issuance of new water rights.
- An adequate foundation that will support a long-term working relationship between Ecology and CSRIA is established in Phase One.

For the first criteria of Phase Two, CSRIA and Ecology are to agree on three pilot conservation projects to test the physical and legal viability of the retiming of return flows. CSRIA's theory is that conservation projects located far from the river could create net water savings that are retimed to benefit summer flows, similar to a storage project. For example, suppose water is diverted to a farm in July and August and the farm's current piping system leaks, resulting in return flows to the Columbia River in December. Suppose that conservation measures stop those leaks from occurring. Now less water needs to be diverted and more water remains instream and improves the July flows. The benefit of increasing July and August flows (when availability is low) far outweighs the impacts of reducing flows in December (when availability is high).

The pilot projects will provide information on how much water can be saved through conservation methods. OCR will then evaluate whether or not enough water is saved to justify issuing new water rights. In 2009, Ecology funded \$1.1 million in grant monies to develop up to three pilot projects. The grants were issued to the Conservation Commission and Franklin Conservation District to lead the effort to develop the pilot projects. The scope of that work focused on the following key elements:

- ① Identifying a geographic area suitable to retiming of return flows.
- ② Identifying geographic areas where numeric and analytical models of area geology had already been developed.
- ③ Identifying participants willing to undertake pilot projects.
- ④ Identifying areas of high demand for conservation so that pilot projects could include more users if they proved successful.

For the second criteria of Phase Two, both parties are to pledge a new cooperative working relationship. In the past, Ecology and CSRIA have been litigants on opposite sides of policy issues in the Columbia River Basin. The VRA is designed to provide a new framework for interacting with one another.

City of Rock Island VRA Feasibility Study (Completed)

In 2007, the City of Rock Island received a \$45,000 grant from the Washington State Department of Community, Trade and Economic Development (CTED) to assess the development of a VRA for a consortium of small eastern Washington cities. Alliance Consulting Group (Alliance) was contracted to oversee the project. In order to determine whether or not the cities should pursue a VRA, Alliance identified the issues, partners and rules involved with VRA development. Ecology provided technical assistance to Alliance on how VRAs work, and discussed possible options for municipal water rights. They also attended a meeting in the city of Brewster and presented information on how a VRA might benefit those communities. The feasibility analysis examined water rights relinquishment, reclaimed water right establishment, exempt well consolidation and water rights re-assignment.

The final report for the Rock Island study listed actions cities needed to take in order to develop a VRA. These ranged from obtaining funds to improving waste water system capacities to examining exempt well consolidations. It also listed possible mitigation benefits that a VRA may provide such as improved water quality and placement of conserved water into the Trust Water Right Program. Their final report concluded that improved participation by municipalities, additional interactions with Ecology and deeper commitment from the cities would be needed. Included in the conclusion was that VRAs have the potential to positively affect cities' water supply needs. As of the publication date of this legislative report, no VRA proposal has been submitted to OCR.

Evaluation of Voluntary Regional Agreements

Since the 2006 legislation, only one VRA exists; the VRA between CSRIA and Ecology. Participation in the CSRIA VRA has been lower than expected and the pilot projects necessary to evaluate the program have not been developed. Therefore, it is impossible to assess if this VRA is a good tool for providing new water for out-of-stream use, streamlining the application process, and protecting instream flow. Nevertheless, because it is the only signed VRA, it is worth considering whether the process itself yielded any lessons learned and whether it is functioning as intended.

When evaluating the CSRIA VRA, two factors need to be taken into consideration:

1) Having been the first VRA it was natural to have some unknowns that needed to be worked through and 2) Since it was completed prior to the implementation of many OCR program elements, additional uncertainties existed.

The process to create the CSRIA VRA was time-consuming, but not necessarily more so than other contract vehicles OCR has used in lieu of VRAs in recent years. It took about 2 years to develop the VRA. While that is longer than some other contracts, given its scope it was not unreasonable. The government consultation process alone consisted of several dozens of meetings with tribes, and federal, state and local governments. The CSRIA VRA was a significant investment for Ecology. Ecology used a team of five senior staff and an Assistant Attorney General to negotiate the VRA.

OCR received robust stakeholder feedback during the VRA consultations. Some of the common concerns expressed were over the July/August no-impact period, uncertainty regarding how pilot projects would be selected and reviewed, and a lack of clarity regarding terms used in the VRA. While some of these were obviously specific to CSRIA, other concerns were more general. All of the comments are available on OCR's website⁶

Participation in the CSRIA VRA has been lower than expected. Once the VRA was signed, OCR participated in workshops sponsored by CSRIA to inform its members about the VRA and what it could do for them. Attendance was sparse with less than 10 members attending each event. The final tally of eight CSRIA members totaling 20 water rights was far short of expectations. This represents only about 5% of the existing interruptible water rights.

Pilot projects also have not been developed despite earnest efforts from involved parties:

- CSRIA proposed several potential sites that proved unsuitable for retiming of return flows.
- The Conservation Commission and the conservation districts conducted outreach to water right holders to attract pilot participants and manage the pilot study.
- OCR funded \$1.1 million in grants to the Conservation Commission and Franklin Conservation District to identify and construct pilots.

The grant's current focus is to identify geographic areas with high retiming potential. The areas singled out consist of the Walla Walla basin, southern Franklin County and the Horse Heaven Hills area in Klickitat County. Concurrently, a portion of the grant funds are being used to find water right holders within these areas that: 1) Divert surface water during summer months,

⁶ http://www.ecy.wa.gov/programs/wr/cwp/VRA_Comments.html

2) Have inefficient irrigation systems and 3) Are capable of implementing a conservation project in a geographic location that allows for retiming of return flows. While no water users have been found, the effort is still on-going. OCR continues to support and invest in identify potential pilot projects.

OCR, CSRIA, the Conservation Commission and Franklin Conservation District have had discussions about why the pilots have not yet materialized. In addition to the above three program constraints collectively agreed on, CSRIA and Ecology continue to struggle with a common definition of “return flow” and how water saved through conservation efforts can be used.

Perhaps as a result of the low membership endorsement of the current VRA, CSRIA has sponsored various changes⁷. The foremost change has to do with the focus on Irrigation Water Management (IWM) as a vehicle to generate on-farm conservation savings. CSRIA proposed legislation in 2009 that would have set a standard of 17% net water savings for all farmers enrolling in an IWM program, with half of the savings remaining in the river and half available to the farmer for irrigation of new acres. OCR, the PAG, and other stakeholders expressed concern about the conversion of former return flows to new consumptive uses and the resulting diminishment in river flows, particularly during the critical months identified in Chapter 90.90 RCW. Stakeholders also expressed concerns about applying relinquishment exemptions retroactively, and crediting net water savings that occurred decades earlier. Ultimately the legislation did not pass.

OCR offered the following two options to CSRIA’s proposed changes⁸. Since agreements were not reached, neither option moved forward.

① The first was to implement CSRIA’s IWM program in two phases. Phase one would be a prospective program that would allow new IWM enrollees to receive the benefits envisioned by CSRIA while addressing stakeholders retroactive relinquishment exemption concerns. Phase two would allow existing IWM users, even those who began decades ago and had not used the water since that time, to enroll, but their impact would be mitigated by new supplies developed by OCR. CSRIA was unable to endorse this phased approach, largely on the basis of equity, since many long-standing IWM practitioners would be unable to participate in the program immediately.

② The second OCR option was to match CSRIA’s program with tributary investments, such that any Columbia River impacts would be offset by an equal amount of tributary benefit, coordinated with Washington State Department of Fish and Wildlife and tribes. OCR went so far as to propose the Columbia River Conservation Incentive Program, in its 2011 agency request legislation. During preliminary vetting with CSRIA, the PAG and stakeholders, OCR agreed to remove the program from the 2011 legislation in the hopes that further stakeholder negotiations would result in a consensus approach.

OCR continues to make progress in the VRA’s requirement to provide mitigation water to offset issuance of VRA drought and new permits. An emerging portfolio of water to assist interruptible water right holders is being developed through OCR’s Drought Insurance Program. The initial acquisition of 33,000 acre-feet of water from the Lake Roosevelt Incremental Storage and Release Program will provide water during drought years to interruptibles on the Columbia River mainstem. Additional drought water supplies will be created as OCR develops new water supply projects and works with Washington Water Trust to obtain water through acquisitions and leases.

7 http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/pag_agendas/Conservation%20O&M%20Briefing%20Packet.pdf

8 OCR’s Counter-Proposal to CSRIA’s Proposed Changes:
<http://www.ecy.wa.gov/programs/wr/cwp/images/pdf/draft-OCR-conservprog.pdf>

Other Contracting Tools

Since 2006, the Office of Columbia River has successfully used several contracting tools other than VRAs to pursue water supply projects, such as:

- Memorandum of Understanding with U.S. Bureau of Reclamation for 132,500 acre-feet of water http://www.ecy.wa.gov/programs/wr/cwp/cr_lkroos.html.
- Memorandum of Agreement with Pend Oreille County Public Utility District for 14,000 acre-feet of water <http://www.ecy.wa.gov/programs/wr/cwp/sullivan.html>.
- Settlement of Agreement and Memorandum of Understanding with Kennewick Irrigation District for 11,005 acre-feet of water <http://www.ecy.wa.gov/programs/wr/cwp/redmtu13.html> and,
- Agreement of Principal with Chelan County Public Utility District that involves three separate projects <http://www.ecy.wa.gov/programs/wr/cwp/projects.html>.

The Office of Columbia River is confident that these types of agreements successfully result in sustainable relationships, comply with statute and are useful resources for securing contracts for new water supply projects.

Stakeholder Input:

This section will be developed after receiving and reviewing comments.

Recommendation:

To determine the value of VRAs, adequate time is needed to educate potential participants, explore possible projects and discuss options. OCR is optimistic that over time, pilot projects that meet the VRA criteria and appeal to water users will be realized and implemented. Therefore, the Office of Columbia River's recommendation is to extend the provisions of section Chapter 90.90.030 RCW to June 30, 2018.

Appendix A: Chapter 90.90 RCW

Columbia river basin water supply

RCW Sections

- 90.90.005 Finding.
- 90.90.010 Columbia river basin water supply development account -- Use for storage facilities and access to water supplies -- Evaluation -- Public comment -- Use of net water savings.
- 90.90.020 Allocation and development of water supplies.
- 90.90.030 Voluntary regional agreements -- Scope and application -- Reports to legislature -- Definitions.
- 90.90.040 Columbia river water supply inventory -- Long-term water supply and demand forecast.
- 90.90.050 Columbia river mainstem water resources information system.
- 90.90.060 Additional releases of water from Lake Roosevelt.
- 90.90.070 Columbia river water delivery account -- Creation -- Distribution.
- 90.90.080 Impacts of water release -- Department of ecology's duties.
- 90.90.900 Effective date -- 2006 c 6.

90.90.005 Finding.

- (1) The legislature finds that a key priority of water resource management in the Columbia river basin is the development of new water supplies that includes storage and conservation in order to meet the economic and community development needs of people and the instream flow needs of fish.
- (2) The legislature therefore declares that a Columbia river basin water supply development program is needed, and directs the department of ecology to aggressively pursue the development of water supplies to benefit both instream and out-of-stream uses.

[2006 c 6 § 1.]

90.90.010 Columbia river basin water supply development account — Use for storage facilities and access to water supplies — Evaluation — Public comment — Use of net water savings.

CHANGE In 2011 (SEE 1803-S2.SL)

- (1) The Columbia river basin water supply development account is created in the state treasury. The account may receive direct appropriations from the legislature, receipts of any funds pursuant to RCW 90.90.020 and 90.90.030, or funds from any other sources.
- (2)(a) Expenditures from the Columbia river basin water supply development account may be used to assess, plan, and develop new storage, improve or alter operations of existing storage facilities, implement conservation projects, or any other actions designed to provide access to new water supplies within the Columbia river basin for both instream and out-of-stream uses. Except for the development of new storage projects, there shall be no expenditures from this account for water acquisition or transfers from one water resource inventory area to another without specific legislative authority.
- (b) Two-thirds of the funds placed in the account shall be used to support the development of new storage facilities; the remaining one-third shall be used for the other purposes listed in this section.

(3)(a) Funds may not be expended from this account for the construction of a new storage facility until the department of ecology evaluates the following:

(i) Water uses to be served by the facility;

(ii) The quantity of water necessary to meet those uses;

(iii) The benefits and costs to the state of meeting those uses, including short-term and long-term economic, cultural, and environmental effects; and

(iv) Alternative means of supplying water to meet those uses, including the costs of those alternatives and an analysis of the extent to which long-term water supply needs can be met using these alternatives.

(b) The department of ecology may rely on studies and information developed through compliance with other state and federal permit requirements and other sources. The department shall compile its findings and conclusions, and provide a summary of the information it reviewed.

(c) Before finalizing its evaluation under the provisions of this section, the department of ecology shall make the preliminary evaluation available to the public. Public comment may be made to the department within thirty days of the date the preliminary evaluation is made public.

(4) Net water savings achieved through conservation measures funded by the account shall be placed in trust in proportion to the state funding provided to implement a project.

(5) Net water savings achieved through conservation measures funded by the account developed within the boundaries of the federal Columbia river reclamation project and directed to the Odessa subarea to reduce the use of groundwater for existing irrigation is exempt from the provisions of subsection (4) of this section.

(6) Moneys in the Columbia river basin water supply development account created in this section may be spent only after appropriation.

(7) Interest earned by deposits in the account will be retained in the account.

[2006 c 6 § 2.]

90.90.020

Allocation and development of water supplies.

CHANGE IN 2011 (SEE 1803-S2.SL)

(1)(a) Water supplies secured through the development of new storage facilities made possible with funding from the Columbia river basin water supply development account shall be allocated as follows:

(i) Two-thirds of active storage shall be available for appropriation for out-of-stream uses; and

(ii) One-third of active storage shall be available to augment instream flows and shall be managed by the department of ecology. The timing of releases of this water shall be determined by the department of ecology, in cooperation with the department of fish and wildlife and fisheries comanagers, to maximize benefits to salmon and steelhead populations.

(b) Water available for appropriation under (a)(i) of this subsection but not yet appropriated shall be temporarily available to augment instream flows to the extent that it does not impair existing water rights.

(2) Water developed under the provisions of this section to offset out-of-stream uses and for instream flows is deemed adequate mitigation for the issuance of new water rights provided for in subsection (1)(a) of this section and satisfies all consultation requirements under state law related to the issuance of new water rights.

(3) The department of ecology shall focus its efforts to develop water supplies for the Columbia river basin on the following needs:

(a) Alternatives to groundwater for agricultural users in the Odessa subarea aquifer;

(b) Sources of water supply for pending water right applications;

(c) A new uninterruptible supply of water for the holders of interruptible water rights on the Columbia river mainstem that are subject to instream flows or other mitigation conditions to protect stream flows; and

- (d) New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin.
- (4) The one-third/two-thirds allocation of water resources between instream and out-of-stream uses established in this section does not apply to applications for changes or transfers of existing water rights in the Columbia river basin.

[2006 c 6 § 3.]

90.90.030

Voluntary regional agreements — Scope and application — Reports to legislature — Definitions. (Expires June 30, 2012.)

- (1) The department of ecology may enter into voluntary regional agreements for the purpose of providing new water for out-of-stream use, streamlining the application process, and protecting instream flow.
- (2) Such agreements shall ensure that:
 - (a) For water rights issued from the Columbia river mainstem, there is no negative impact on Columbia river mainstem instream flows in the months of July and August as a result of the new appropriations issued under the agreement;
 - (b) For water rights issued from the lower Snake river mainstem, there is no negative impact on Snake river mainstem instream flows from April through August as a result of the new appropriations issued under the agreement; and
 - (c) Efforts are made to harmonize such agreements with watershed plans adopted under the authority of chapter 90.82 RCW that are applicable to the area covered by the agreement.
- (3) The protection of instream flow as set forth in subsection (2) of this section is adequate for purposes of mitigating instream flow impacts resulting from any appropriations for out-of-stream use made under a voluntary regional agreement, and the only applicable consultation provisions under state law regarding instream flow impacts shall be those set forth in subsection (4) of this section.
- (4) Before executing a voluntary agreement under this section, the department of ecology shall:
 - (a) Provide a sixty-day period for consultation with county legislative authorities and watershed planning groups with jurisdiction over the area where the water rights included in the agreement are located, the department of fish and wildlife, and affected tribal governments, and federal agencies. The department of fish and wildlife shall provide written comments within that time period. The consultation process for voluntary regional agreements developed under the provisions of this section is deemed adequate for the issuance of new water rights provided for in this section and satisfies all consultation requirements under state law related to the issuance of new water rights; and
 - (b) Provide a thirty-day public review and comment period for a draft agreement, and publish a summary of any public comments received. The thirty-day review period shall not begin until after the department of ecology has concluded its consultation under (a) of this subsection and the comments that have been received by the department are made available to the public.
- (5) The provisions of subsection (4) of this section satisfy all applicable consultation requirements under state law.
- (6) The provisions of this section and any voluntary regional agreements developed under such provisions may not be relied upon by the department of ecology as a precedent, standard, or model that must be followed in any other voluntary regional agreements.
- (7) Nothing in this section may be interpreted or administered in a manner that precludes the processing of water right applications under chapter 90.03 or 90.44 RCW that are not included in a voluntary regional agreement.
- (8) Nothing in this section may be interpreted or administered in a manner that impairs or diminishes a valid water right or a habitat conservation plan approved for purposes of compliance with the federal endangered species act.
- (9) The department of ecology shall monitor and evaluate the water allocated to instream and out-of-stream uses under this section, evaluate the program, and provide an interim report to the appropriate committees of the leg-

islature by June 30, 2008. A final report shall be provided to the appropriate committees of the legislature by June 30, 2011.

(10) If the department of ecology executes a voluntary agreement under this section that includes water rights appropriated from the lower Snake river mainstem, the department shall develop aggregate data in accordance with the provisions of RCW 90.90.050 for the lower Snake river mainstem.

(11) Any agreement entered into under this section shall remain in full force and effect through the term of the agreement regardless of the expiration of this section.

(12) The definitions in this subsection apply to this section and RCW 90.90.050, and may only be used for purposes of implementing these sections.

(a) "Columbia river mainstem" means all water in the Columbia river within the ordinary high water mark of the main channel of the Columbia river between the border of the United States and Canada and the Bonneville dam, and all groundwater within one mile of the high water mark.

(b) "Lower Snake river mainstem" means all water in the lower Snake river within the ordinary high water mark of the main channel of the lower Snake river from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark.

(13) This section expires June 30, 2012.

[2006 c 6 § 4.]

90.90.040

Columbia river water supply inventory — Long-term water supply and demand forecast.

CHANGE IN 2011 (SEE 1803-S2.SL)

(1) To support the development of new water supplies in the Columbia river and to protect instream flow, the department of ecology shall work with all interested parties, including interested county legislative authorities and watershed planning groups, adjacent to the Columbia river, and affected tribal governments, to develop a Columbia river water supply inventory and a long-term water supply and demand forecast. The inventory must include:

(a) A list of conservation projects that have been implemented under this chapter and the amount of water conservation they have achieved; and

(b) A list of potential water supply and storage projects in the Columbia river basin, including estimates of:

(i) Cost per acre-foot;

(ii) Benefit to fish and other instream needs;

(iii) Benefit to out-of-stream needs; and

(iv) Environmental and cultural impacts.

(2) The department of ecology shall complete the first Columbia river water supply inventory by November 15, 2006, and shall update the inventory annually thereafter.

(3) The department of ecology shall complete the first Columbia river long-term water supply and demand forecast by November 15, 2006, and shall update the report every five years thereafter.

[2006 c 6 § 5.]

90.90.050

Columbia river mainstem water resources information system.

(1) In order to better understand current water use and instream flows in the Columbia river mainstem, the department of ecology shall establish and maintain a Columbia river mainstem water resources information system that provides the information necessary for effective mainstem water resource planning and management.

(2) To accomplish the objective in subsection (1) of this section, the department of ecology shall use information compiled by existing local watershed planning groups, federal agencies, the Bonneville power administration, irrigation districts, conservation districts in the basin, and other available sources. The information shall include:

(a) The total aggregate quantity of water rights issued under state permits and certificates and filed under state claims on the Columbia river mainstem and for groundwater within one mile of the mainstem; and

(b) The total aggregate volume of current water use under these rights as metered and reported by water users under current law.

(3) The department of ecology shall publish the aggregate data on the department's web site no later than June 30, 2009, and shall periodically update the data.

(4) For purposes of this section, the definition of Columbia river mainstem in RCW 90.90.030(12) shall apply and the use of the definition is solely limited to the purpose of collecting data to meet the information requirements of this section.

[2006 c 6 § 6.]

90.90.060

Additional releases of water from Lake Roosevelt.

(1) In 2006, the legislature enacted chapter 6, Laws of 2006, an act relating to water resource management in the Columbia river basin. In its enactment, the legislature established that a key priority of water resource management in the Columbia river basin is the development of new water supplies to meet economic and community development needs concurrent with instream flow needs.

(2) Consistent with this intent, the governor and the legislature are in agreement with the Confederated Tribes of the Colville Reservation and the Spokane Tribe of Indians to support additional releases of water from Lake Roosevelt. Because the sovereign and proprietary interests of these tribal governments are directly affected by water levels in Lake Roosevelt, the state intends to share a portion of the benefits derived from Lake Roosevelt water releases and to mitigate for any impacts such releases may have upon the tribes.

(3) These new releases of Lake Roosevelt water of approximately eighty-two thousand five hundred acre feet of water, increasing to no more than one hundred thirty-two thousand five hundred acre feet of water in drought years, will bolster the state economy and will meet the following critical needs: New surface water supplies for farmers to replace the use of diminishing groundwater in the Odessa aquifer; new water supplies for municipalities with pending water right applications; enhanced certainty for agricultural water users with water rights that are interruptible during times of drought; and water to increase flows in the river when salmon need it most.

(4) Nothing in chapter 82, Laws of 2008 expands, impairs, or otherwise affects the existing status and sovereignty of the tribal governments involved in Lake Roosevelt water releases pursuant to this section and RCW 90.90.070.

[2008 c 82 § 1.]

Notes: Effective date -- 2008 c 82: "This act takes effect July 1, 2008." [2008 c 82 § 4.]

90.90.070

Columbia river water delivery account — Creation — Distribution.

(1) The Columbia river water delivery account is created in the state treasury. Moneys in the account may be spent only after appropriation. The account consists of all moneys transferred or appropriated to the account by law. The legislature may appropriate moneys in the account:

(a) For distributions for purposes of RCW 90.90.060 as provided in this section; and

(b) To the department of ecology for other purposes relating to implementation of RCW 90.90.060 and 90.90.080.

(2) On July 1, 2008, and each July 1st thereafter for the duration of the agreements described in RCW 90.90.060, the state treasurer shall transfer moneys from the general fund into the Columbia river water delivery account in the amounts described in subsection (3) of this section.

(3) Subject to appropriations, on July 1, 2008, and each July 1st thereafter, the state treasurer shall distribute moneys from the Columbia river water delivery account as follows:

(a) To the Confederated Tribes of the Colville Reservation, on July 1, 2008, the sum of three million seven hundred seventy-five thousand dollars; and on July 1, 2009, the sum of three million six hundred twenty-five thousand dollars. Each July 1st thereafter for the duration of the agreement, the treasurer shall distribute an amount equal to the previous year's distribution adjusted for inflation. The inflation adjustment shall be computed using the percentage change on the implicit price deflator for personal consumption expenditures for the United States for the previous calendar year, as compiled by the bureau of economic analysis of the United States department of commerce and reported in the most recent quarterly publication of the economic and revenue forecast council or successor agency.

(b) To the Spokane Tribe of Indians, on July 1, 2008, the sum of two million two hundred fifty thousand dollars. Each July 1st thereafter for the duration of the agreement, the treasurer shall distribute an amount equal to the previous year's distribution adjusted for inflation. The inflation adjustment shall be computed using the percentage change in the consumer price index for the Washington state Seattle-Tacoma-Bremerton consolidated metropolitan statistical area for the previous calendar year as compiled by the bureau of labor statistics, United States department of labor, and reported in the most recent quarterly publication of the economic and revenue forecast council or successor agency.

(4) The state treasurer may not distribute moneys from the Columbia river water delivery account to a tribe pursuant to this section unless the director of ecology has certified in writing to the state treasurer and the legislature that the agreement with the tribes is still in effect.

[2008 c 82 § 2.]

Notes: Effective date -- 2008 c 82: See note following RCW 90.90.060.

90.90.080

Impacts of water release — Department of ecology's duties.

(1) Because the potential impacts of water releases under agreements reached under this chapter on affected counties are unknown, the department of ecology shall, by November 15, 2009:

(a) Conduct an assessment of the potential impacts, including recommendations for mitigation, and report to [the] appropriate committees of the legislature; and

(b) Establish a process for identifying and reporting on future impacts on the affected counties, and for making recommendations for mitigation.

(2) Within the framework of Columbia river basin water resources management under this chapter, the department of ecology shall:

(a) Provide technical assistance to help affected counties identify and develop competitive project applications to benefit both instream and out-of-stream uses;

(b) Assist affected counties in exploring options to ensure water resources are available for their current and future needs. Such options include pursuing a memorandum of understanding with the affected counties that is consistent with RCW 90.90.005 to effectuate the purposes of this section. The memorandum of understanding shall be available for public comment for a period of thirty days before being signed by the department; and

(c) Consider regional equity when making funding decisions on water supply applications.

(3) As used in this section, "affected counties" means those counties east of the crest of the Cascade mountains with an international border, or those counties east of the crest of the Cascade mountains that border both a county with an international border and a county with four hundred thousand or more residents.

[2008 c 82 § 3.]

Notes: Effective date -- 2008 c 82: See note following RCW 90.90.060.

90.90.900

Effective date — 2006 c 6.

This act takes effect July 1, 2006.

[2006 c 6 § 10.]

Appendix B:

A Voluntary Regional Agreement Between The Columbia-Snake River Irrigators Association (CSRIA) And The Washington State Department of Ecology (Ecology)

A. Preamble

CSRIA members specified in Appendix A and the Department of Ecology are entering into a Voluntary Regional Agreement (VRA), as authorized under RCW 90.90.030. This statute provides that Ecology may enter into voluntary regional agreements for the purpose of providing new water for out-of-stream use, streamlining the application process, and protecting instream flow.

This VRA is intended to result in the issuance of drought permits to existing interruptible water right holders and new permanent water rights on the Columbia River and Lower Snake River. New water rights shall only be issued by Ecology if the standards in RCW 90.03.290 are met. This VRA also provides that new water uses resulting from the issuance of permits under this agreement shall not reduce or negatively impact streamflows in the Columbia or Snake Rivers during the critical periods established by the legislature.

To meet this standard of protection, Ecology and CSRIA will pursue water conservation, acquisition, storage and other appropriate actions that will provide new water in a quantity sufficient to fully offset any and all new water uses during summer months (see RCW 90.90.030(2)). CSRIA members who participate in this VRA will provide Ecology with an annual mitigation payment. Additionally, CSRIA members who participate in this VRA will submit their water rights for recalibration, to reflect beneficial use consistent with best management practices. Any water saved during the recalibration that can be enrolled in the State's trust water program will be permanently assigned to Ecology. Consistent with state law, Ecology will use water acquired through recalibration, and acquired through other conservation and storage actions funded by the Columbia River Program, to mitigate for new water right applications in the order they were/are received¹ (WAC 173-152-030).

Establishment of Pilot Projects and Implementation

This VRA will be implemented in two phases. Phase 1 will involve full implementation of the VRA, except Section E. Under Phase 1, the feasibility of Section E will be investigated by conducting three pilot water conservation projects to be mutually agreed upon by Ecology and CSRIA. The pilot projects are intended to demonstrate the potential for the types of conservation projects proposed by CSRIA to fulfill the provisions of Section E of the VRA. Phase 1 will terminate no later than December 31, 2010 (unless extended by mutual written agreement). Findings and conclusions regarding Phase 1 will be documented in Ecology's 2009 Columbia River Basin Water Management Program Legislative Report.

Phase 2 would consist of continued implementation of the Phase 1 portions of this VRA as well as full implementation of Section E. Phase 2 will be entered into by written agreement of Ecology and CSRIA only if the parties agree to the following:

- 1) The types of conservation projects identified by CSRIA appear to be capable of providing water in sufficient quantities to support issuance of the new water rights envisioned in Section E of this VRA; and
- 2) An adequate foundation has been established in Phase 1 that will support a long-term working relationship between Ecology and CSRIA.

B. Parties

This VRA is entered into by the State of Washington, acting through the Department of Ecology, an agency of Washington State government in Olympia, Washington, and designated members of CSRIA, defined in this document as CSRIA VRA Participants (see Appendix A), and the CSRIA organization.

¹ Ecology has a backlog of several hundred existing applications for new water rights. See Columbia River Programmatic EIS for a discussion on processing of water rights in the Program.

C. Definitions

1. "Best Management Practices (BMP's)." BMP's mean conservation and efficiency measures that must be implemented by "CSRIA VRA Participants" under this VRA (see Appendix B, CSRIA Irrigation BMPs, June 2005 edition). The intent of best management practices is to ensure the highest and most economical, beneficial use of water and the elimination of project return flows. Every 5 years from the date of this agreement, Ecology and CSRIA shall meet to discuss whether this agreement should be modified to reflect updated BMPs.
2. "Columbia River Mainstem." Columbia River Mainstem means all water in the Columbia River within the ordinary high water mark of the main channel of the Columbia River between the border of the United States and Canada and the Bonneville dam, and all ground water within one mile of the high water mark (RCW 90.90.030(12)(a)).
3. "Columbia River Mitigation Standard." Columbia River Mitigation Standards means water rights issued from the Columbia River mainstem, where there will be no negative impact on Columbia River mainstem instream flows in the months of July and August as a result of the new appropriations issued under the agreement (RCW 90.90.030(2)(a)).
4. "CSRIA VRA Participant." CSRIA VRA Participant means a CSRIA member who meets the following conditions:
 - a. The participant is a CSRIA member as of the required enrollment deadline; AND
 - b. The participant is identified in Appendix A as having agreed to have an application for a drought permit or new water right processed under this VRA in lieu of the consultation process provided in WAC 173-563-020(4); AND
 - c. The participant has an "interruptible water right" on the "Columbia River Mainstem" or the "Lower Snake River Mainstem" and an application for a drought permit associated with that "interruptible water right" is on file with Ecology as of the required enrollment deadline; OR
 - d. The participant has a water right application on the "Columbia River Mainstem" or the "Lower Snake River Mainstem" on file with Ecology when Phase 2 is initiated as specified in Section E.1.
5. "Drought." Drought means that the March 1 forecast of April-September runoff at The Dalles is 60 MAF or less (see WAC 173-563-056(c)) and the Governor has declared a drought under WAC 173-166.
6. "Drought Permit." Drought Permit means a standby/reserve permit authorizing the use of Columbia River Mainstem or Lower Snake River Mainstem water in a drought year in the same quantities and manner as authorized by an Interruptible Water Right in a non-drought year, subject to available Mitigation Water.
7. "Interruptible Water Right." An Interruptible Water Right means an existing certificate or permit that is subject to the 1980 Columbia River instream flow rule (WAC 173-563).
8. "Lower Snake River Mainstem." Lower Snake River Mainstem means all water in the lower Snake River within the ordinary high water mark of the main channel of the lower Snake River from the head of Ice Harbor pool to the confluence of the Snake and Columbia Rivers, and all ground water within one mile of the high water mark (RCW 90.90.030(12)(b)).
9. "Mitigation Payment." Mitigation Payment means an annual payment by a CSRIA VRA Participant to Ecology for mitigation water funded in advance for permits issued under this VRA.
10. "Mitigation Water." Mitigation Water means water managed in Ecology's trust water program or otherwise developed through Ecology's efforts to find, fund and secure water rights through acquisitions, surface and aquifer storage projects, pumps and pipes infrastructure and other conservation projects.
11. "Recalibration." Recalibration means Ecology's tentative determination of the extent and validity of a water right certificate, permit or claim consistent with state law, including applicable regulations, and with appropriate Ecology and Benton & Franklin Water Conservancy Board's guidance. The process of developing a tentative determination shall include consultation with CSRIA. As a condition of this VRA, an existing water right must be recalibrated if a CSRIA VRA participant applies for a new water right or a drought permit, and if the water right is:
 - a. The interruptible right associated with the drought permit; OR
 - b. A water right owned by the participant that shares a point of diversion or withdrawal with the proposed new water right, interruptible water right or drought permit; OR

c. A water right that shares a place of use with the proposed new water right, interruptible water right or drought permit; OR

d. A water right that is specifically conditioned with a diversion or beneficial use limitation as a water right in a., b. or c. (e.g. Diversions under Water Right A and B shall not exceed 1 cfs).

The provisions of b., c., and d., above, shall not apply to water rights that are under separate ownership from the CSRIA VRA Participant for whom recalibration is being conducted.

12. “Saved Water.” Saved Water means the difference between the tentative determination of the water right and the quantity of water required for beneficial use based on best management practices following recalibration of a water right. The process of developing a tentative determination and determining the saved water quantity shall include consultation with CSRIA.

13. “Snake River Mitigation Standard.” Snake River Mitigation Standard means water rights issued from the Lower Snake River Mainstem, where there will be there is no negative impact on Lower Snake River Mainstem instream flows from April through August as a result of the new appropriations issued under the agreement (RCW 90.90.030(2)(b)).

14. “Trust Water Program.” Trust Water Program means Ecology’s statutory authority under RCW 90.42 and RCW 90.38 to manage waters of the State for instream and other uses.

15. “VRA Implementation Plan.” The VRA Implementation Plan means a plan that describes the location and quantities of (where and in what quantities) Mitigation Water is available in Ecology’s Trust Water Program (or in storage managed by Ecology) and which applicants will receive it. Updates to the VRA Implementation Plan will be completed iteratively as the program expands.

D. Terms and Conditions For Drought Permits

The parties agree to the following mutual obligations:

1. CSRIA VRA Participants will be allowed to file applications for drought permit in two enrollment periods. Enrollment period 1 will conclude on July 1, 2008. Enrollment period 1 applicants will be identified in the VRA at time of signing. Enrollment period 2 will conclude on December 31, 2008. Consistent with provisions of Section F, the parties agree to modify the VRA subsequent to the conclusion of enrollment period 2 solely for the purpose of identifying the additional applicants. The parties agree that such modification will not represent a substantive modification to the VRA.

2. CSRIA VRA Participants shall maintain compliance with BMPs (see Appendix B CSRIA Irrigation BMPs, June 2005 edition.). CSRIA VRA Participants shall submit to on-site BMP certification inspections conducted by Ecology’s staff or contractors (e.g. conservation districts). Such inspections shall be coordinated with CSRIA.

3. CSRIA VRA Participants applying for drought permits shall submit their existing water rights for recalibration by Ecology. The process of developing a tentative determination shall include consultation with CSRIA. Any “saved water” shall be permanently transferred to Ecology. Where possible, Ecology will manage “saved water” in its Trust Water Program, in part to mitigate for the impacts of out-of-stream uses for the next pending water right applicant, and in part to meet the instream flow objectives in RCW 90.90.005(2). If said waters do not meet the criteria for protection under the trust water program, then they shall be voluntarily relinquished (perfected water) or otherwise forfeited (inchoate water) by the CSRIA VRA Participant to the State. Ecology will provide standardized forms for trust water conveyances, voluntary relinquishment or inchoate water forfeiture.

4. CSRIA VRA Participants shall complete the initial BMP certification process and recalibration of existing water rights before receiving a drought permit from Ecology.

5. In establishing demand reduction conditions for drought permits issued under this agreement, consideration will be given to the difference between the amount of water permitted under the original interruptible water right or permit and the quantity of water required for beneficial use based on implemented best management practices. Such conditions will be determined on a permit-by-permit basis. Drought preparedness planning currently conducted by Ecology is relies largely on assumptions based on 2001 drought conditions; however, it is recognized that under more severe drought conditions, more extensive demand reduction measures may be necessary.

6. RCW 90.90.020(3)(c) directs Ecology to develop “a new uninterruptible supply of water for the holders of interruptible water rights on the Columbia River mainstem that are subject to instream flows or other mitigation

conditions to protect stream flows.” Ecology will make a good faith effort to provide the mitigation water necessary to ensure that drought permits will meet the Columbia River and Snake River Mitigation Standards under RCW 90.90.030(2); Ecology will consult with CSRIA in the process of identifying measures to prevent drought curtailment in advance, and to avoid curtailment during a drought condition. For example, these measures could include voluntary sales of water by CSRIA members.

7. Mitigation through water savings must be secured by Ecology either before or at the same time that water use under a drought permit occurs.

8. When mitigation water is secured, Ecology will prepare a VRA Implementation Plan describing the sources and quantities of mitigation water. Ecology will conduct a SEPA review of the Implementation Plan before permits are issued.

9. Ecology commits to issue drought permits effective during the periods in which Interruptible Water Rights would be curtailed.

10. Ecology will process applications for drought permits under this VRA as follows:

a. In advance of a declared drought if the applications can be priority processed under WAC 173-152 (Hillis Rule) or cost-reimbursement; OR,

b. In a drought year, subject to a declaration by the Governor.

11. In the event that sufficient mitigation water for a given drought year is unavailable, then mitigation water shall be assigned to CSRIA VRA participants who are in compliance with this VRA in the drought year in a manner consistent with the Ecology’s environmental review for the mitigation water. Ecology will consult with CSRIA in the process of identifying measures to prevent curtailment in advance, and to avoid curtailment during a drought condition.

12. CSRIA will actively support all tangible and pragmatic water supply options identified and pursued by Ecology to provide mitigation water for drought permits.

13. CSRIA and CSRIA VRA Participants agree that all water use authorized in Ecology-issued permits pursuant to this VRA must meet the Columbia River and Snake River Mitigation Standards under RCW 90.90.030(2) and the criteria of applicable water law, including but not limited to RCW 90.03.290.

E. Terms and Conditions Regarding New Water Rights

The parties agree to the following mutual obligations:

1. Within 60 days following mutual written agreement by both parties that Phase 2 will be initiated, CSRIA VRA participants will file applications for new permits with Ecology. However, such agreement shall not be made prior to the legislative approval for the Mitigation Payment in Section E.2. in compliance with I-960. If both parties agree to initiate Phase 2, both Ecology and CSRIA will jointly seek legislative approval for the Mitigation Payment.

2. CSRIA VRA Participants agree to pay a mitigation payment for mitigation water funded and acquired by Ecology in advance of issuance of new permits. The first payment will be calculated based on \$10 per acre foot of water, times the full quantity of the issued permit, times the first 3 years of authorized use of water. The first payment shall be made to Ecology within 30 days of the date the permit is issued. Starting in Year 4 and thereafter, annual payments will be based on \$10 per acre foot of water times the actual measured use of water (or the full permitted quantity in the event of measurement failure) from the previous year. Payment in Year 4 and thereafter are due by January 31st. Should Ecology incur charges or fees associated with securing service contracts from the Bureau of Reclamation, the parties agree to negotiate pass-through costs, if any.

3. CSRIA VRA Participants shall maintain compliance with BMPs (see Appendix B CSRIA Irrigation BMPs, June 2005 edition.). CSRIA VRA Participants shall submit to on-site BMP certification inspections conducted by Ecology staff or contractors (e.g. conservation districts). Such inspections shall be coordinated with CSRIA.

4. CSRIA VRA Participants applying for new permits shall submit their existing water rights for recalibration by Ecology. The process of developing a tentative determination shall include consultation with CSRIA. Where possible, Ecology will manage “saved water” in its Trust Water Program, in part to mitigate for the impacts of out-of-stream uses for the next pending water right applicant, and in part meet the instream flow objectives in RCW 90.90.005(2). If said waters do not meet the criteria for protection under the trust water program, then they shall

be voluntarily relinquished (perfected water) or otherwise forfeited (inchoate water) by the CSRIA VRA Participant to the State. Ecology will provide standardized forms for trust water conveyances, voluntary relinquishment or inchoate water forfeiture.

5. CSRIA VRA Participants shall complete the initial BMP certification process and recalibration of existing water rights before receiving a new water right permit from Ecology.

6. CSRIA and CSRIA VRA Participants agree that all water use under permits issued pursuant to this VRA must meet the Columbia River and Snake River Mitigation Standards under RCW 90.90.030(2) and the criteria of applicable water law, including but not limited to RCW 90.03.290 and I-960.

7. CSRIA will work with Ecology to identify the most cost-effective and feasible projects that can be funded to provide mitigation water for new water rights.

8. CSRIA will support Ecology efforts to find, fund and acquire mitigation water, utilizing funds from the Columbia River Basin Water Supply Development Account and/or Mitigation Payments paid by CSRIA members to Ecology.

9. CSRIA VRA Participants shall install and maintain water measuring capability or devices (in compliance with permit conditions) on each diversion for each water right (drought permit, new water right and recalibrated water right) authorized under this VRA consistent with WAC 173-173.

10. CSRIA VRA Participants shall provide the information necessary for Ecology to investigate the proposed new water right permit, drought permit, and associated water rights to be recalibrated. This information shall be shared with CSRIA by Ecology once it has been received from the VRA Participant. Documentation will include but is not limited to:

- a. Historic water use information;
- b. Water right ownership interest(s);
- c. Proposed water use information;
- d. Compliance with BMPs.

11. For CSRIA VRA Participants that are municipal or quasi-municipal entities (special service districts), the following additional terms apply for new water rights and those pending development:

- a. Municipal, utility, or special service district water efficiency standards consistent with applicable CSRIA BMPs may be considered as one option for best management practices, but shall in no case be less stringent than required by the State Department of Health
- b. Nothing in this Agreement shall supersede the terms of the Settlement Agreement in *Center for Environmental Law and Policy v. Department of Ecology*, and the subsequent water right permit issued by Ecology subsequent to that agreement, Surface Water Permit No. S4-30976P.

12. Ecology will identify the most cost effective and feasible projects that can be funded to provide mitigation water for new water rights.

13. Ecology will enter into agreements with water right holders to fund mitigation water projects utilizing funds provided by the State and/or CSRIA VRA Participants.

14. Ecology will deposit Mitigation Payments received from CSRIA VRA Participants into the Columbia River Basin Water Supply Development Account.

15. Mitigation Payments made by CSRIA VRA Participants will be adjusted annually for inflation by Ecology. Ecology will use the Implicit Price Deflator (IPD) for Personal Consumption as provided by OFM to adjust payments. An alternate IPD may be used provided both parties agree.

16. Ecology will make a good faith effort to provide the mitigation water necessary to ensure new permits meet the Columbia River and Snake River Mitigation Standards under RCW 90.90.030(2).

17. Mitigation through water savings must be secured by Ecology either before or at the same time that water use under a new permit occurs.

18. When mitigation water is secured, Ecology will prepare a VRA Implementation Plan describing the sources and quantities of mitigation water. Ecology will conduct a SEPA review of the Implementation Plan before new permits are issued.

19. All new water rights issued under this agreement shall meet the Columbia River and Snake River Mitigation Requirements, the requirements of I-960 and applicable water law, including but not limited to RCW 90.03.290.

20. Ecology will develop and implement a billing and notification system to track compliance with Mitigation Payments collected under this agreement, saved water developed through mitigation water projects and CSRIA VRA Participants benefiting from saved water. Ecology will include this information in applicable legislative reports.

21. Ecology will process applications for new water rights in as timely a manner as possible, in accordance with applicable law and the funding and staff provided by the Legislature.

22. In order to enable priority processing of water right applications, CSRIA VRA Participants may propose priority processing under the "Hillis Rule" (WAC 173-152) if applicable.

F. Modifications and Amendments

This agreement may be modified or amended in writing by mutual agreement of the parties. Modifications and amendments shall be signed by managing, authorized agents of the parties and binding on the parties, their representatives and assignees. If Ecology deems a proposed modification or amendment is substantive, it will consult with CSRIA on the scope of the proposed amendment. Following consultation, Ecology will provide public notice as specified in RCW 90.90.030(4) if Ecology determines the amendment is substantive.

G. Assignment

If a CSRIA VRA Participant or their heirs, successors or assigns receives a new water right permit or a drought permit, then participation under this agreement can be assigned if the following conditions are met:

1. Ecology receives signed notification by the CSRIA VRA Participant waiving equity interest in all or a portion of the affected water right; and,
2. Ecology receives signed notification by the assignee of consent to abide by the terms and conditions of this VRA and the affected water right; and,
3. The assignee owns property appurtenant to the affected water right.

Assignments shall be made on a form provided by Ecology. Any assignment beyond the scope of the terms of this VRA constitutes a new VRA. This VRA and each of its terms, provisions, conditions and covenants shall be binding upon the parties and their respective heirs, successors and assigns.

H. Compliance

If a CSRIA VRA Participant receives a drought permit or a new water right under this VRA, then active compliance with the terms and conditions of this VRA is required in order to divert water under their water right(s). These conditions will be included in the permits themselves and are binding even if the VRA itself is terminated. These conditions include, but are not limited to the following:

1. BMP's must be maintained and certified.
2. Measurement devices and/or capability shall be installed and maintained consistent with WAC 173-173. Measurement data shall be submitted in a timely manner. If measurement data is either not submitted or is unusable, then the mitigation payment for that year shall be based on the full permitted quantity.
3. Mitigation Payments and fees must be paid by January 31st of each year starting in Year 4. If payment is not received by January 31st, then Ecology shall notify the water right holder that pumping shall not be authorized under the permitted water right(s) until payment in full is provided to Ecology. If payment is provided after January 31st, then a late payment fee of 2 percent per month (or portion thereof) is required.

In the event of noncompliance, Ecology will provide technical assistance and enforcement according to RCW 90.03.605 in order to facilitate compliance.

I. Termination for Convenience

Any party may terminate this Agreement upon prior written notice of at least 30 calendar days to the other party. If this Agreement is terminated for convenience, the parties shall be liable only for performance rendered or costs

incurred in accordance with law and the terms of this VRA prior to the effective date of termination. Any valid permits and/or water right decisions issued pursuant to this VRA before Termination for Convenience shall remain in effect so long as the permit conditions are met.

J. Termination for Cause

If, for any cause, any party does not fulfill in a timely and proper manner its obligations under this Agreement, or if any party violates any of the terms and conditions of this Agreement, the aggrieved party shall give the other party written notice of at least 30 calendar days of such failure or violation and of the aggrieved party's intention to terminate this Agreement. The responsible party will have the opportunity to correct the violation or failure within 30 calendar days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice by the aggrieved party to the affected party. If this Agreement is terminated for cause, the parties shall be liable only for performance rendered or costs incurred in accordance with law and the terms of this VRA prior to the effective date of termination. Any valid permit and/or water right decisions issued pursuant to this VRA before Termination for Cause shall remain in effect so long as the permit conditions are met.

K. Disputes

In the event that a dispute arises that relates to any way to this VRA, the parties shall first attempt to resolve the dispute on an informal basis. If informal negotiations do not resolve the dispute, the parties may agree to jointly select a mediator to help resolve the dispute. Mediation is not required. If a party chooses not to mediate the dispute, any party may proceed to terminate the VRA, in accordance with the termination provisions. Ecology permit decisions and orders are appealable to the Pollution Control Hearings Board. Further action may only occur after the exhaustion of administrative remedies, as an "other agency action" under the Administrative Procedure Act, RCW 34.05.570 (4).

L. Governance

This agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. applicable state and federal statutes and rules; and
- b. any other provisions of the agreement, including materials incorporated by reference.

M. Waiver

A failure by either party to exercise its rights under this agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

N. Severability

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable. If a provision of the VRA is held invalid and Ecology deems that a modification is necessary and substantive, it will consult with CSRJA and provide public notice as specified in RCW 90.90.030(4).

O. All Writings Contained Herein

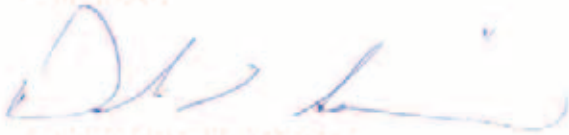
This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

P. Term of Agreement

The term of this Agreement shall be based on successful implementation of the Phase 1 pilot projects. The start date of Phase 1 shall be the date of this agreement. The termination date of Phase 1 shall be December 31, 2010. Phase 1 may be extended until June 30, 2012 based on mutual written consent of both parties. Phase 2 shall commence at the conclusion of Phase 1 and occur by mutual written agreement of both parties. Phase 2 shall end on June 30, 2012, unless extended through mutual written agreement of the parties.

This Voluntary Regional Agreement is Executed By:

Representing the Washington State Dept. of Ecology:



Derek I. Sandison for
Jay J. Manning, Director

Date

7/18/08

*Representing the Columbia-Snake River
Irrigators Association VRA Participants in
Appendix A:*



Don Odegard, President, CSRIA

Date

7/18/08



Darryll Olsen, Ph.D., CSRIA Board Rep.

Date

7/18/2008